

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

IN RE:

GENERAL CAPACITOR, LLC

CASE NO.: 19-40279-KKS

CHAPTER: 11

Debtor.

/

**ORDER GRANTING *DEBTOR'S MOTION TO CONVERT TO***  
**CHAPTER 7 (DOC. 109), OVERRULING OBJECTION (DOC. 126)**  
**AND DENYING MOTION TO DISMISS (DOC. 127)**

THIS CASE came before the Court for hearing on November 21, 2019 on *Debtor's Motion to Convert to Chapter 7* ("Motion," Doc. 109) and the document filed twice on behalf of Linda Zhong and Enertrode, Inc. (collectively, "Interested Parties"), docketed once as an objection to the Motion and again as a motion to dismiss.<sup>1</sup> Present at the hearing were Byron Wright III, counsel for Debtor; Nicole Grimal Helmstetter, counsel for Interested Parties; Michael H. Moody, counsel for creditors Florida State University Sponsored Research and The Florida State University Research Foundation; Charles Edwards, Assistant United States

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<sup>1</sup> This document is in both instances entitled *Objection to Debtor's Motion To Convert to Chapter 7 [ECF #109] And Motion to Dismiss Chapter 11 Case*. ("Objection," Docs. 126 and 127).

Trustee; and Daniel R. Fogarty, counsel for creditor Conwell Business Law, LLP. For the reasons stated at the hearing and set forth below, the Objection is due to be overruled, and the Motion is due to be granted. To the extent that the Objection constitutes a motion to dismiss this case, that motion is due to be denied.

### **BACKGROUND**

Debtor commenced this small business case by filing a bare bones voluntary Chapter 11 Petition on May 16, 2019.<sup>2</sup> Later Debtor filed Schedules, Amended Schedules and other documents but to date has filed no Plan. In a small business case “only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is extended . . . or the court, for cause, orders otherwise.”<sup>3</sup> Here, Debtor’s exclusive 180-day period expired on November 12, 2019.<sup>4</sup>

Interested Parties object to the Motion on the basis that conversion is not an absolute right. They argue that Debtor’s creditors will be better served by dismissal, which they seek based on 11 U.S.C. § 1112(b). Debtor argues that Interested Parties have no standing to appear in this case or

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<sup>2</sup> Doc. 1.

<sup>3</sup> 11 U.S.C. § 1121(e)(1) (2019). Subsection (2) of Section 1121(e) provides that the “plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief” unless the Court orders otherwise. 11 U.S.C. § 1121(e)(2) (2019).

<sup>4</sup> Debtor sought an extension of exclusivity but withdrew that motion (Docs. 85, 116).

object to conversion because they have no claim, and that conversion is in the best interests of creditors and the estate.

### ANALYSIS

Section 1112(a) of the Bankruptcy Code provides that a Chapter 11 debtor may convert a case to Chapter 7, unless: “(1) the debtor is not a debtor in possession; (2) the case originally was commenced as an involuntary case under this chapter; or (3) the case was converted to a case under this chapter other than on the debtor’s request.”<sup>5</sup> None of these exceptions are present here. Section 1112(b) provides that on request of a party in interest, and after notice and a hearing, a bankruptcy court shall convert or dismiss a case, “whichever is in the best interests of creditors and the estate, for cause . . . .”<sup>6</sup>

Interested Parties assert that the Court should dismiss, rather than convert, this case because Debtor filed its petition in bad faith. According to them, Debtor’s bad faith filing is evidenced by alleged fraudulent transfers of assets to (but not from) Debtor, and by Debtor’s commencement of this case to escape their collection efforts.

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<sup>5</sup> 11 U.S.C. § 1112(a) (2019).

<sup>6</sup> 11 U.S.C. § 1112(b) (2019).

To determine whether a debtor has filed a Chapter 11 petition in bad faith, courts in the Eleventh Circuit “may consider any factors which evidence ‘an intent to abuse the judicial process and the purposes of the reorganization provisions.’”<sup>7</sup> In *In re Phoenix Piccadilly, Ltd.*, the Eleventh Circuit set forth six non-inclusive factors for bankruptcy courts to consider.<sup>8</sup> Most of the *Phoenix Piccadilly* factors are not present here: this Debtor has more than one asset, its unsecured creditors hold claims totaling over \$1 million, and this case does not involve simply a two-party dispute between Debtor and Interested Parties. More importantly, the Court in *Phoenix Piccadilly* was not faced with dismissal or conversion; its only decision was whether to affirm dismissal of a Chapter 11 case.

Here, appointment of a Chapter 7 Trustee is clearly in the best interests of creditors. There appear to be assets with which a Chapter 7 Trustee may make a meaningful distribution to unsecured creditors. For example, Interested Parties and Debtor agree that Debtor’s assets, not including intellectual property, are worth approximately \$1.2 Million.<sup>9</sup> Only one creditor, Conwell Business Law, LLP (“Conwell”), claims a lien

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<sup>7</sup> *In re Phoenix Piccadilly, Ltd.*, 849 F.2d 1393, 1394-95 (11th Cir. 1988) (the “*Phoenix Piccadilly*” factors).

<sup>8</sup> *Id.*

<sup>9</sup> Doc. 39, pp. 3-9; Doc.127, p. 7.

on these assets, and its claim totals only \$192,456.50.<sup>10</sup> Additionally, a Chapter 7 Trustee will have an opportunity to test the amount of Conwell's claim and whether its lien is properly perfected, as well as whether Interested Parties' judgment lien may be preferential.<sup>11</sup> A Chapter 7 Trustee will also be able to identify and, if appropriate, pursue fraudulent or preferential transfers, as well as possible claims against insiders.

Interested Parties make no assertion that Debtor made inappropriate transfers of assets or otherwise abused the Bankruptcy system during the Chapter 11. The fact that Debtor filed Chapter 11 at least in part to stay Interested Parties' collection efforts is not, without more, an indicator of bad faith sufficient to constitute cause to dismiss rather than convert.

Interested Parties have claims against persons and entities in addition to Debtor.<sup>12</sup> Conversion of this case to Chapter 7 should have little or no impact on Interested Parties' ability to continue collection efforts against these additional non-debtor parties.

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<sup>10</sup> Claim 2-1, p.4.

<sup>11</sup> Conwell Business Law, LLLP's claim to a blanket lien on all of Debtor's assets is based on a line of credit, security agreement, and UCC-1 financing statements executed in January of 2019 (Claim 2-1). Interested Parties obtained their \$2.6 million judgment on January 30, 2019 and began their efforts to domesticate that judgment in Florida on February 22, 2019 (Doc. 126, pp. 2-4). Debtor filed its Chapter 11 Petition on May 16, 2019 (Doc. 1).

<sup>12</sup> Claim 11-2, p. 5.

## CONCLUSION

Although conversion from Chapter 11 to Chapter 7 may not be an absolute right, under the facts here conversion to Chapter 7 is in the best interests of creditors and the estate. Interested Parties appear to be the only ones that would benefit from dismissal of this case, rather than conversion.

For the reasons stated at the hearing and as set forth above, it is  
ORDERED:

1. *Debtor's Motion to Convert to Chapter 7* (Doc. 109) is GRANTED. The Objection of Interested Parties, Linda Zhong and Enertrode, Inc., (Doc. 126) is OVERRULED.
2. To the extent that Interested Parties' Objection constitutes a Motion to Dismiss (Doc. 127), it is DENIED.
3. The Clerk shall enter an *Order Converting Case* or such other order(s) as may be appropriate to effectuate this ruling.

DONE and ORDERED on January 9, 2020.

  
KAREN K. SPECIE  
Chief U.S. Bankruptcy Judge

Attorney for Debtor is directed to serve a copy of this Order in interested parties and file a certificate of service within three (3) business days of entry of this Order.

FORM orcnv7 (Rev. 03/15)

**UNITED STATES BANKRUPTCY COURT**  
Northern District of Florida  
Tallahassee Division

In Re: General Capacitor, LLC  
Tax ID: 45-3763765  
Debtor

Bankruptcy Case No.: 19-40279-KKS

Chapter: 7  
Judge: Karen K. Specie

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***ORDER CONVERTING CASE TO CHAPTER 7***

Upon consideration of the motion/notice to convert pursuant to Section 1112, Title 11, United States Code, it is

***ORDERED:***

1. The debtor's Chapter 11 case be, and it hereby is, converted to a case under Chapter 7 of Title 11, United States Code.
2. Within fourteen (14) days of the date of this order, or on or before the meeting of creditors to be subsequently scheduled in the converted Chapter 7 case, the debtor shall file a schedule of current income and current expenditures and the statement of intention required by 11 U.S.C. Section 521(a)(1) and (a)(2). In addition, the Chapter 7 Statement of Your Current Monthly Income (Official Form B22A-1) and Chapter 7 Means Test Calculation (Form B22A-2) shall be filed within fourteen (14) days pursuant to Rule 1007(c), if applicable.
3. Pursuant to Rule 1019(5), the debtor(s) in the superseded Chapter 11 case shall file within fourteen (14) days of the date of this order, a full report and account including current inventory and a separate schedule (with mailing matrix) listing all unpaid debts incurred after the commencement of the Chapter 11 case. Failure to file said report will cause the debtor(s) or officers of the debtor to be surcharged for the cost to have the report prepared and may cause the debtor(s) or its officers to be held in contempt and fined or otherwise punished.
4. Upon the filing of the aforesaid final report and account and schedules (with mailing matrix), the Court will fix by subsequent notice a bar date within which all creditors holding post-petition claims incurred during the superseded proceeding under Chapter 7, and which are unpaid, including all claims of the United States, any state, or subdivision thereof must file their claims.
5. The former trustee, if applicable, is hereby discharged of all further duties and responsibilities herein. The trustee shall forthwith turn over all money or other property of the estate and all records in his possession to the newly appointed Chapter 7 trustee.
6. If converting from a Chapter 13 and there has not been an Order Confirming Plan and Order to Debtor(s) entered by the Court, then the Court reserves jurisdiction solely to determine fees and expenses for the Chapter 13 trustee and to enter any and all Orders related to disgorgement and proceedings related thereto. The Chapter 13 trustee shall have fourteen (14) days in which to file an application for said fees. Upon the filing of said fee application, or if no fee application is filed, the Chapter 13 trustee shall forthwith remit all funds on hand, less the

amounts requested for fees and expenses, to the Debtor(s). The Chapter 13 trustee shall hold all funds not remitted to Debtor(s) pending a hearing or Order to determine reasonable fees and expenses.

***ORDERED*** at Tallahassee, Florida, January 9, 2020.

/s/ Karen K. Specie  
Karen K. Specie  
U.S. Bankruptcy Judge

**Service:**